



POLICE DEPARTMENT

February 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Andrew Schmitt
Tax Registry No. 924751
Brooklyn Court Section
Disciplinary Case No. 2013-10036

The above-named member of the Department appeared before me on July 2, and September 26, 2014, charged with the following:

1. Said Police Officer Andrew Schmitt, on or about February 21, 2012, at approximately 2325 hours while assigned to the TB DT34 and on duty inside of 2904 Stillwell Avenue, Kings County, did wrongfully use force against Zakariyya Amin, in that he grabbed his arm causing Zakariyya Amin to fall to the floor.

P.G. 203-11, Page 1, Paragraph 2 – USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq., Respondent was represented by Michael Martinez, Esq., Worth, Longworth & London, LLP.

Respondent through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

CCRB called Zakariyya Amin as a witness.

Zakariyya Amin

Amin was a barber employed at Timbuktu barber shop. On February 21, 2012, after completing his shift, he took a celebratory shot of alcohol with fellow coworkers and patrons. Approximately 30 minutes later, at around 11:30 p.m., Amin left the barber shop and walked to Island Food Court restaurant. His intentions were to purchase some carry out food.

Once inside Amin became aware of a situation involving the restaurant's employees and their refusal to serve what appeared to be a homeless man. At some point several police officers, including Respondent, entered the restaurant to address the situation. Amin stated that he offered to purchase food on behalf of the man. Amin and the homeless man were served their meals and they exited the restaurant along with the officers.

Amin stood outside the restaurant for about "30 seconds" before deciding he wanted a drink. He then went back inside Island Food Court. He stated that none of the officers had told him that he was not permitted to go back inside.

As he was ordering a soda from the counter, located at the back end of the restaurant, Respondent came at him from behind, "grabbed" both of his shoulders, "lifted" him off the ground, and "threw" him into a table, fracturing his right arm and causing him to strike his head on the ground. As he lay on the ground, Respondent stood

over him, pointed his finger, and began yelling and screaming. A second officer then dragged him up by his right arm and took him outside.

Once outside and beyond the view of the cameras, Respondent punched Amin twice in the face. The second officer attempted to intervene and stop Respondent. Respondent then reached around the officer and “smacked” Amin in the mouth. After the officers escorted Amin some distance from the restaurant Respondent stated to him, “Yo, just get the fuck out of here” and left. Soon thereafter, Amin called 911.

Sergeant Moyibi Thomas from the 60 Precinct responded to the scene to investigate. Amin was offered medical assistance but he refused because he was afraid. He stated that he sought medical attention the next day at Coney Island Hospital.

CCRB submitted video footage of the incident captured from three different cameras. *See CCRB’s Exhibit (CCRB XI)*.

On April 18, 2012, Amin met with CCRB investigators in regard to the incident. Amin agreed with counsel during cross-examination that the narrative given during the interview was different than his trial testimony. He explained that when he was thrown by Respondent “something was jolted” in his head and that, “over the time what I thought I seen and thought happened was not actually what happened.”

Amin testified that since the incident he can no longer cut hair. He claimed to be both disabled and unemployed.

Respondent’s Case

Police Officer Christopher LaForce and Respondent testified as witnesses. Additionally, a transcript and audio recording of Sergeant Moyibi Thomas’s testimony

from a CCRB interview was entered into evidence. *Respondent's Exhibit (RX A) is the compact disc audio recording of the interview of Thomas. (RX B) is the transcript of that interview.*

Police Christophe LaForce

LaForce is a 19-year member of the service assigned to Transit District 34. LaForce testified that since February 21, 2012, he has frequented Timbuktu barber shop "four or five" times and that each time Amin had cut his hair. He further stated that he has seen Amin cutting the hair of other individuals.

Out-of-Court Statement of Sergeant Moyibi Thomas

Thomas was not available to testify. A transcript and audio recording of his interview with CCRB was submitted into evidence.

On February 21, 2012, Thomas received a call from the Internal Affairs Bureau (IAB) to investigate an allegation. Soon thereafter, Thomas responded to Island Food Court and met with Amin. Amin told Thomas that there was "some kind of conflict" involving another individual and that he had been kicked out of the restaurant. Thomas spoke with the restaurant's owner who told him that they had wanted Amin out of the restaurant.

Amin had no visible injuries and the ambulance on scene was sent away. Thomas observed Amin unsteady on his feet and smelled alcohol on his breath. He believed Amin was intoxicated and requested that the ambulance respond back to the scene.

Thomas contacted IAB and updated them in regard to Amin's condition. IAB told Thomas they would be conducting a follow-up investigation.

Respondent

Respondent is a 15-year member of the Department assigned to Transit District 34. On February 21, 2012, at around 11:10 p.m. Respondent was standing outside of the station house with other officers from his command awaiting the conclusion of their tour. At some point, an owner from Island Food Court approached the officers seeking help removing a disruptive individual from the restaurant. The employee led the officers to the restaurant and identified Amin as being the disruptive individual. Upon observing Amin, Respondent testified that he appeared to be "disheveled" and "agitated."

Respondent entered the store and told Amin, "Listen, the owner of the store doesn't want you in the store. Can you please leave?" At first Amin was "abrasive" but then, in sum and substance, stated to Respondent, "Okay, all right, I guess I have to leave." They all left the store together and Respondent began walking back towards the station house.

A short time later the same owner again approached Respondent and stated that Amin was now becoming "really disruptive" and "crazy." Respondent quickly walked back to the location. When he entered Island Food Court he observed Amin yelling and threatening another employee.

As he walked toward Amin he stated in a loud voice, "Hey, I asked you to leave." Respondent grabbed him by the right arm and shoulder and as he attempted to turn him around Amin "dropped to the ground." Respondent testified that at this point he became

a little upset. He stood over Amin, pointed his finger, and stated, "You are acting as a child, you know. This person asked you to leave the store." Additional officers entered the restaurant. They picked Amin up and escorted him out. Amin was not handcuffed.

Respondent testified that Amin had a strong odor of alcohol on his breath and appeared intoxicated. As they led Amin some distance from the restaurant he cursed at the officers. Ultimately, Amin was not issued a summons nor arrested.

FINDINGS AND ANALYSIS

Respondent is charged with wrongfully using force against Amin, in that, he grabbed Amin's arm causing him to fall to the floor. There are three videos of the incident taken from three different angles. *Video One* faces the rear portion of the restaurant. It shows Amin near the rear counter for some time before Respondent briskly walks up to him. Respondent can be seen placing his hands on Amin's shoulder area in what appears to be an attempt to turn him around. Subsequently, Amin falls to the ground. Then another officer enters the frame and lifts Amin. That officer then escorts Amin out of the restaurant.

Video Two faces the front section of the restaurant and does not capture the physical contact between Respondent and Amin. It shows a front view of Respondent entering Island Food Court and briskly walking towards Amin. There is a point where both individuals are off frame for several seconds. Then Amin appears back in frame. He is seen lying on his back on the ground and Respondent is seen standing over him and pointing.

Video Three captures the front outside area of the restaurant. It shows the aftermath of Amin's initial interaction with the police. Amin is seen exiting the restaurant along with the alleged homeless individual followed by the police. The homeless man walks off. Amin can be seen standing motionless outside the restaurant for some time, partially blocking the entrance. Approximately one minute elapses before he reenters the restaurant. Approximately a minute later Respondent is seen entering the restaurant followed by the employee.

Respondent's testimony conforms more to what the videos depict. First, Amin testified that the police initially responded to Island Food Court to address the homeless man. However, this does not seem to comport with *Video Three*. In *Video Three* we can see that it was both Amin and the homeless man who were directed out of the restaurant by the police. Which leads me to conclude that, during the initial encounter, the police responded to Island Food Court in order to eject both Amin and the homeless individual.

Next, in *Video Three* Amin is seen standing peculiarly stationary outside the restaurant for some time. He testified that at this point he was considering if he wanted a beverage. I find it unusual that a reasonable individual would stand stationary for that long merely to decide if he was thirsty. Amin can then be seen reentering the restaurant, crassly and rudely cutting in between a group of individuals who were attempting to enter at the same time. Respondent and Thomas had stated that Amin was possibly intoxicated. They appear to move away from Amin who appears on video to be muttering some words. I find that this testimony comports with the type of behavior Amin was exhibiting in *Video Three*.

Continuing to view *Video Three*, Amin was inside the restaurant for over a minute before Respondent entered. Amin testified that during this time he was attempting to purchase a drink. However, what occurred inside must have been more than a simple request for a beverage otherwise the restaurant's employee would not have thought it was necessary to again leave the location and flag down the police. In addition, while other patrons are seen entering the store the same time as Amin they are also seen exiting. Amin is not seen exiting quickly which should have been the case had he only been purchasing a beverage.

Video One and *Video Two* both show Respondent reentering the restaurant and briskly and purposefully walking towards Amin. In *Video One* Respondent can be seen grabbing Amin's shoulder area and Amin subsequently falling to the ground. However, Amin falling to the ground does not appear to be the direct result of Respondent's actions. Respondent testified that he grabbed Amin's shoulder area in an attempt to physically turn him around. Amin testified that he was lifted up and thrown to the ground. In viewing *Video One* it does not appear that Respondent bladed his body nor torqued himself in a manner indicative of throwing someone to the ground, particularly when you consider the close space between the counter and the tables. Therefore, I find the images captured in *Video One* comport with Respondent's testimony.

Amin was non-responsive to verbal directions. Respondent testified that when he first approached Amin, he advised him that the storeowner wanted him out of the store and that he was requested to leave. Thus Amin had been directed to leave and subsequently escorted from Island Food Court by Respondent and several other officers during the initial encounter. There appeared to be a bodega next door to the restaurant

where Amin could have purchased a soda, but he chose to ignore the police who removed him from the restaurant and went back inside once they left the location as evident from the video. Considering the circumstances, Respondent was permitted to utilize a necessary minimal level of physical force in order to eject Amin from the restaurant a second time.

Importantly, we can see that Respondent did not punch or kick Amin; rather he grabbed him about the shoulders in an attempt to physically turn his body. Thus, it appears that Respondent was properly utilizing a minimal level of force in order to gain compliance from Amin. Further, I believe any reasonable officer placed in Respondent's position of having to eject a non-compliant, agitated, and possibly intoxicated male from a location would apply similar methods and tactics.

Respondent was found to be acting reasonably when he applied a minimal level of force in order to gain compliance from a non-compliant individual. Thus, it was not proven that Respondent was acting wrongfully when he grabbed Amin's shoulder area and Amin fell to the ground.

It must be noted that Amin lacked credibility as a witness. He acknowledged that the statement he gave to CCRB during his interview regarding the incident was different than the testimony he gave at trial. For example, he told the CCRB investigator that he went into the restaurant to buy chicken. He then left the restaurant because he did not like how the chicken looked. He then went back in, saw a homeless man asking for food and then attempted to purchase food for him. This was different than the account he gave at trial; which was that he purchased food for himself and the homeless man and then

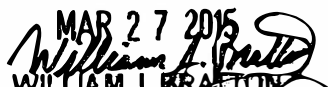
exited the restaurant with the homeless man and the officers. Amin tried to blame this discrepancy on the alleged jolt he received to his head.

Amin also testified that he was grabbed by both shoulders, lifted off the ground, and thrown into a table fracturing his right arm and striking his head on the ground. This was not evident in the video shown of the incident. Further, he testified that outside the view of the camera, (as if Respondent knew he was being videotaped), Respondent punched him twice in the face and “smacked” him in the mouth. Amin was allegedly treated at Coney Island Hospital, yet no medical records of his treatment and/or injuries were offered into evidence to corroborate his testimony.

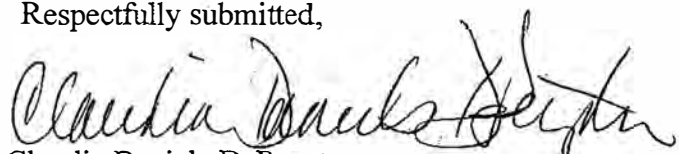
Furthermore, Amin testified that he can no longer cut hair and is disabled and unemployed; yet LaForce testified that since February 21, 2012, Amin cut his hair at the Timbuktu barber shop (Amin’s family owned barber shop that he acknowledged during cross-examination) at least four or five times and that he observed Amin cutting other patron’s hair. No effort was made by CCRB to rebut this testimony. This Court is left with the testimony of an incredible witness not worthy of belief who is capable of exaggeration of his injuries and lying under oath.

Accordingly, Respondent is found Not Guilty.

APPROVED

MAR 27 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials